Remarks

The various parts of the Office Action are discussed below under similar headings.

Claim Rejections **- Obviousness-Type Double Patenting and 35 U.S.C. § 103**

The Examiner has rejected all pending claims of the present application under 35 U.S.C. § 103(a) over Dehli (U.S. Patent No. 5,638,156) in view of various references, including Atkinson (U.S. Patent No. 4,897,802) and Silvers (U.S. Patent No. 6,137,498). The Examiner also rejected claims 1 and 13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of Dehli in view of Atkinson and Silvers. Applicant respectfully traverses each of the rejections set forth in the Office Action dated June 28, 2005. Because none of the references, taken alone or in combination, teach or fairly suggest the present invention, it is respectfully submitted that the pending claims are patentable over the cited references and the rejections should be withdrawn.

The primary reference relied upon by the Examiner is Dehli. According to the Examiner, the "core of examiner's argument is simply that applicant's invention is an automated means of performing a manual task, e.g. the process of Dehli as set forth above." (Office Action dated June 28, 2005 at p. 15). It is respectfully submitted that the respective processes for creation of the merged image disclosed in the present application and Dehli are patentably distinct.

The process described in Dehli is believed to require the deletion of n-1 regions for each cell of each base image from the image (where n is the number of base images to be merged). This process is referred to herein as the "delete then layer" process. The "delete then layer" process taught in Dehli achieves the transparency by masking the regions using a mechanical fixture. Likewise, Atkinson is believed to teach the same process for manufacturing a mosaic image as that taught in Dehli. (See column 5, line 67 - column 6, line 42). While the present application describes the "delete then layer" process, the present application also teaches and claims a "merging" step in which the deletion of *n-1* regions does not occur, but rather only the selected regions of the base images are merged. The "merging" process is distinct from the "delete then layer" process.

Claim 1 is directed, *inter alia*, to a merging of selected regions of each base image only. For example, see claim 1, step f) "merging of only the selected mergable portions of each respective base image into the merged image template to provide a single layer merged image." The claimed merging step can take place in a blank template divided according to the method of claim 1, or alternatively into one of the base images. This

method is patentably distinct from the "delete then layer" process believed to be disclosed in Dehli and Atkinson.

Furthermore, Dehli is not believed to perform step d) as set forth in claim 1, namely "applying the pattern to each base image into regions". Dehli is not believed to perform this step as the Dehli device simply masks n-1 regions of each cell of a base image without division of the cells at all. (See Dehli, column 9, lines 34-67). Therefore, even if the Dehli and Atkinson references are combined, the combination does not provide this claimed feature.

As the Examiner points out, Silvers is relied on to teach image mosaics and their manipulation on a computer. (Office Action dated June 28, 2005 at p. 14). However, the Silvers' reference is believed to teach mosaics in which regions of a mosaic template are filled with complete images, and not portions of an image, as required by pending claim 1. In addition to this distinction, the present invention applies the same pattern to each of the base images and the merged image template, whereas Silvers does not. The Silvers' reference is believed to teach that the target image is divided into a plurality of cells having a number of regions and not the base or source images.

Further, the Examiner places reliance on computer programs such as Photoshop as well known programs that are capable of forming a mosaic similar to that produced according to the method of the present invention. Again, however, as the Examiner admits on page 15 of the Office Action, programs such as Photoshop, merely mask the unwanted portion of the base image, without dividing the cells into regions.

Indeed, none of the references of record have been found to teach a division and the merging of selected portions of a plurality of base images according to claim 1 of the present invention. It is therefore submitted that a person skilled in the art has no suggestion or motivation based on the art of record to pursue the claimed process. Therefore, it is respectfully submitted that the combination of Dehli, Atkinson and Silvers, along with the other art of record does not disclose nor reasonably teach the process set forth in claim 1. For at least these reasons, it is respectfully submitted that claim 1 distinguishes patentably from Dehli, Atkinson and Silvers, either alone or in combination. Accordingly, the rejections should be withdrawn.

For at least these reasons, the combination of references suggested by the Examiner does not and cannot achieve the invention, as defined in claim 1 and claims 2-19, which depend therefrom. Therefore, Applicant respectfully submits that the process defined in pending claims 1-19 is patentable over the references of record, either alone or in combination. Accordingly, the rejections of claims 1-19 should be withdrawn.

Conclusion

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE UNDER 37 C.F.R. 1.8

I hereby certify that this paper (along with any paper or item referred to as being attached or enclosed) is being facsimile transmitted to the U.S. Patent and Trademark Office (571-273-8300) on the date shown below.

Date: 9/28/05

Timothy E. Manning